

To the Members of the California Assembly:

I am returning Assembly Bill 2081 without my signature.

This bill would impose a burden of proof standard and a reporting requirement on employers when the employer wishes to exclude employees from workers' compensation coverage because of the employees' status as officers or directors of a corporation. The bill also adds new disclosure requirements and prohibitions on rebates and similar inducements in the utilization review process to the Labor Code.

The laudable goal of reducing misclassification of employees as exempt shareholder officers does not warrant abandoning the usual burden of proof of preponderance of the evidence. There is no other workers' compensation statute that uses this heightened burden of proof. Enforcement action specifically targeting unscrupulous practices is a more appropriate way of addressing the problem than establishing a "clear and convincing" burden of proof.

The bill's provisions relating to prohibited payments by claims administrators in relation to utilization review are deficient as they apply only to entities defined as claims administrators and not to natural persons who are claims adjusters. Additionally, the requirement to file annual reports regarding denials of treatment will impose heavy administrative and economic burdens on utilization review entities.

For these reasons, I am returning this bill without my signature.

Sincerely,

Arnold Schwarzenegger